



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



April 24, 2003

Cameo Investment Corporation
Marlene Aboshar
P.O. Box 5292
Manchester, NH 03108

**NOTICE OF DECISION
ADMINISTRATIVE FINE
No. AF 02-035 (WATER
SUPPLY)**

Re: Owl's Nest Store and Restaurant
Alton, NH

Dear Ms. Aboshar:

As you are aware, by Notice of Proposed Administrative Fine and Hearing No. AF 02-035 issued October 10, 2002, the Water Division ("the Division") sought administrative fines totaling \$11,500 against Cameo Investment Corporation ("Cameo") for alleged violations of RSA 485 and the rules adopted thereto, relating to water system monitoring for bacteria and nitrates, and providing public notice for the failure to sample, arising from activities on property located on Route 11 in Alton, NH ("the Water System"). Pursuant to RSA 485:58, IV and based on my review of the evidence presented at the hearing held on this matter on March 31, 2003, I have concluded that a fine of \$8,500 is appropriate as set forth below:

- ▶ A fine in the amount \$2,000 is imposed against Cameo for failing to comply with Section E.1. of Administrative Order WD 01-24 ("the Order") by failing to submit a total coliform sample within 15 days of the date of the Order.
- ▶ A fine in the amount \$2,000 is imposed against Cameo for failing to comply with Section E.4. of the Order by failing to submit proof of public notice to the Division along with a cover letter indicating how, when, where, and by whom the public notice was given.
- ▶ A fine in the amount \$2,000 is imposed against Cameo for failing to comply with Section E.5. of the Order by failing to submit a total coliform sample by October 15, 2001.
- ▶ A fine in the amount \$100 is imposed against Cameo for failing to submit water samples for total coliform analysis in the Water System's scheduled month of June 2001 (federal fiscal year 2000-2001).
- ▶ A fine in the amount \$100 is imposed against Cameo for failing to submit water samples for total coliform analysis in the Water System's scheduled month of April 2002 (federal fiscal year 2001-2002).
- ▶ A fine in the amount \$200 is imposed against Cameo for failing to submit water samples for total coliform analysis in the Water System's scheduled month of June 2002 (federal fiscal year 2001-2002).

- ▶ A fine in the amount \$1,000 is imposed against Cameo for failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in June 2001.
- ▶ A fine in the amount \$1,000 is imposed against Cameo for failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in October 2001.
- ▶ A fine in the amount \$1,000 is imposed against Cameo for failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in April 2002.
- ▶ A fine in the amount \$1,000 is imposed against Cameo for failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in June 2002.
- ▶ A fine in the amount \$100 is imposed against Cameo for failing to submit a water sample for nitrate analysis in the second quarter of 2002.
- ▶ A fine in the amount \$1,000 is imposed against Cameo for failing to provide proof of public notice to the division within 10 days of providing public notice for the failure to sample for nitrate in the second quarter of 2002.
- ▶ Of the \$11,500 fine imposed, \$3,000 is suspended conditional on Cameo not violating RSA 485 or any rule adopted pursuant thereto, for a period of two years from the date of this decision. If Cameo violates RSA 485 and the rules within two years from the date of the decision, regardless of when the final determination is made that the violation occurred, the \$11,500 fine shall be due and payable.

The \$8,500 fine shall be paid within 30 days of the date of the decision.

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the DES Legal Unit/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

The purpose of RSA 485, the New Hampshire Safe Drinking Water Act, is to provide a drinking water protection program for the public. To this end, Env-Ws 325.05 requires the Water System to test for the presence of total coliform bacteria; Env-Ws 326.30 requires the Water System to submit an annual nitrate sample; and Env-Ws 351.01, requires the Water System to provide proof of public notice to DES for the failure to sample. As the owner of the Water System, Cameo is responsible for testing for coliform bacteria and nitrates, and for providing public notice to DES when it failed to sample. The record shows that Cameo failed to submit water samples for total coliform analysis and nitrates, and to provide proof of public notice to DES for the failure to sample for total coliform bacteria and nitrates. Because Cameo failed to comply with the statute and rules, it endangered the health of the users of the Water System.

This decision is based on the following findings and conclusions:

1. Cameo Investment Corporation is the owner of the Owl's Nest Store and Restaurant, a water system serving 14 cottages and a 42-seat restaurant located on Route 11, Alton, NH ("the Water System").
2. Under RSA 485:1-a, X and Env-Ws 302.02(ca), the Water System is classified as a transient, non-community system.
3. RSA 485:4 authorizes DES to investigate the sanitary conditions and methods pertaining to a public water supply and require treatment necessary to insure adequate protection of public health.
4. RSA 485:58 authorizes DES, in part, to issue an order to address a "condition [that] exists in a public water system which will cause a violation of a primary standard and may result in a serious risk to public health..."
5. Env-Ws 315.01 requires the Water System to monitor for bacteria in accordance with a schedule based on the population served by the Water System.
6. Env-Ws 325.05 requires the Water System to submit water samples for total coliform analysis.
7. Env-Ws 326.30 requires the Water System to submit annual water samples for nitrate analysis.
8. Env-Ws 321.09 requires the Water System to monitor at the time designated by DES within each compliance period in accordance with the Water System's sampling schedule.
9. Env-Ws 351.01 requires the Water System to notify consumers served by the system of the contamination and provide proof of public notice to the Division.
10. On July 28, 1999, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the June 1999 sampling month.
11. On November 29, 1999, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the October 1999 sampling month.
12. On December 7, 1999, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the June 1999 violation.
13. On or about December 8, 1999, DES issued a Letter of Deficiency # 99-128 to Cameo Investment Corporation for failing to monitor for total coliform bacteria in June and October 1999.

14. On March 29, 2000, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the October 1999 violation.
15. On September 25, 2000, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the August 2000 sampling month.
16. On November 27, 2000, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the October 2000 sampling month.
17. On January 25, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice of the August 2000 sampling violation.
18. On March 26, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the October 2000 sampling month violation.
19. On May 29, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the April 2001 sampling month.
20. On or about July 20, 2001, DES issued Administrative Order WD 01-24 ("the Order") to Cameo Investment Corporation for the failure to submit water samples for total coliform analysis in June 1999, October 1999, August 2000, October 2000, and April 2001; and the failure to provide proof of public notice for the August 2000, October 2000 and April 2000 violations.
21. On July 25, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the June 2001 sampling month.
22. On October 1, 2001, DES issued a Notice of Violation to Cameo for the failure to post public notice for the April 2001 sampling month violation.
23. On November 26, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to public notice for the June 2001 sampling month violation.
24. On November 26, 2001, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the October 2001 sampling month.
25. On January 17, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the October 2001 sampling month violation.
26. On June 3, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the April 2002 sampling month.
27. On July 26, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to monitor for bacteria in the June 2002 sampling month.

28. On July 31, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the April 2002 sampling month violation.
29. On September 19, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for the failure to post public notice for the June 2002 sampling month violation.
30. On August 9, 2002, DES issued a Notice of Violation to Cameo Investment Corporation for failing to monitor for nitrates in the second quarter of 2002.
31. Cameo Investment Corporation violated RSA 485:4 and RSA 485:58 by failing to comply with Section E.1. of the Order by failing to submit a total coliform sample within 15 days of the date of the Order.
32. For a violation of RSA 485:4 and RSA 485:58, Env-C 602.10(f) authorizes a fine of \$2,000.
33. Cameo Investment Corporation violated RSA 485:4 and RSA 485:58 by failing to comply with Section E.4. of the Order by failing to submit proof of public notice to the Division along with a cover letter indicating how, when, where, and by whom the public notice was given.
34. For a violation of RSA 485:4 and RSA 485:58, Env-C 602.10(f) authorizes a fine of \$2,000.
35. Cameo Investment Corporation violated RSA 485:4 and RSA 485:58 by failing to comply with Section E.5. of the Order by failing to submit a total coliform sample by October 15, 2001.
36. For a violation of RSA 485:4 and RSA 485:58, Env-C 602.10(f) authorizes a fine of \$2,000.
37. Cameo Investment Corporation violated Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of June 2001 (federal fiscal year 2000-2001).
38. For a violation of Env-Ws 325.05, Env-C 602.03(a) authorizes a fine of \$100.
39. Cameo Investment Corporation violated Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of April 2002 (federal fiscal year 2001-2002).
40. For a violation of Env-Ws 325.05, Env-C 602.03(a) authorizes a fine of \$100.
41. Cameo Investment Corporation violated Env-Ws 325.05 by failing to submit water samples for total coliform analysis in the Water System's scheduled month of June 2002

(federal fiscal year 2001-2002).

42. For a violation of Env-Ws 325.05, Env-C 602.03(a) authorizes a fine of \$200.
43. Cameo Investment Corporation violated former Env-Ws 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in June 2001.
44. For a violation of former Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
45. Cameo Investment Corporation violated former Env-Ws 351.01 by failing to provide proof of public notice to the Division within 30 days of the failure to sample for total coliform bacteria in October 2001.
46. For a violation of former Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
47. Cameo Investment Corporation violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in April 2002.
48. For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
49. Cameo Investment Corporation violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for total coliform bacteria in June 2002.
50. For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
51. Cameo Investment Corporation violated Env-Ws 326.30 by failing to submit a water sample for nitrate analysis in the second quarter of 2002.
52. For a violation of Env-Ws 326.30, Env-C 602.03(b) authorizes a fine of \$100.
53. Cameo Investment Corporation violated Env-Ws 351.01 by failing to provide proof of public notice to the Division within 10 days of providing public notice for the failure to sample for nitrate in the second quarter of 2002.
54. For a violation of Env-Ws 351.01, Env-C 602.04(b) authorizes a fine of \$1,000.
55. None of the factors identified in Env-C 601.09(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violations noted in # 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, and 53 above.
56. As to the Proposed Findings of Fact submitted by the Division, the following rulings are made:
 - a. Proposed Findings #1-42 are granted.

Cameo violated RSA 485 and the rules adopted thereto, by failing to submit water samples for total coliform and nitrate analysis, and for failing to provide public notice for the failure to sample. Thus, for the reasons discussed above, I have concluded that the \$8,500 fine imposed against Cameo is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206 (copy enclosed).

Very truly yours,


COPY

Robert Monaco
Acting Commissioner

Enclosure

cc: Board of Selectmen, Town of Alton
Brian Boyers, Health Officer, Town of Alton
Arthur Bursey, Sampling Agent
DHHS Restaurant Licensing
USEPA, Region 1
Harry T. Stewart, P.E., Director, Water Division
Mark Harbaugh, DES Enforcement Attorney
Susan Weiss Alexant, DES Hearings and Rules Attorney

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99